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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORH DAKOTA**
(Western Division)

McKENZIE COUNTY, NORTH)
DAKOTA, municipal entity)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

Case No. 1:23-cv-00094

**DECLARATION OF KEITH WINTER
IN SUPPORT OF PLAINTIFF
MCKENZIE COUNTY'S OPPOSITION
TO THE DEFENDANT UNITED
STATES OF AMERICA'S MOTION TO
DISMISS**

I, KEITH WINTER, state that the following is true and correct, and make this statement based on my personal knowledge and understanding of the facts:

1. I serve as President of the McKenzie County Grazing Association (MCGA) and have been appointed in the past by McKenzie and Billings County Commissioners in North Dakota to facilitate coordination of the section line and road disputes within the National Grasslands among the Counties.

2. I own and continue to operate a ranch in western North Dakota. I have been a member of the MCGA for 55 years. My great uncle settled in western McKenzie County in 1890 and my family has been a MCGA member since 1937.

3. For the better part of 35 years I have been active in federal land management issues, including changes to federal regulation and management of livestock grazing, other federal land issues including land use planning, wilderness debates, and access to and through federally-owned lands. I have served on committees of the Public Lands Council and National Cattle and Beef Association.

4. I have also investigated the land acquisition history of the Nationals Grasslands, which included researching and obtaining the condemnation judgments from the 1930s at the Kansas City National Archives office. In addition, after Billings, Golden Valley, McKenzie, and Slope Counties settled their lawsuit challenging the Forest Service's Inventoried Roadless Conservation Area Rule, the Development Transportation Final Rule, and the Off-Highway Vehicle Decision in 2007, I helped the County Commissioners gather the required documentation to prove the existence of the section line rights-of-way and other County public roads across the National Grasslands. I have spent years gathering and submitting documentation to the County on the existence of section line rights-of-way and other County public roads.

5. I spent many years researching, but I also have personal knowledge of the road network in McKenzie County specifically due to my own ranching operations and in my role as President of the MCGA. Under authority of North Dakota Century Code § 36-08-02, MCGA was incorporated in 1937 and manages a mix of private, state, and federal land located in McKenzie County. Today, MCGA manages the livestock grazing and the conservation practices for a total of 850,000 acres of land on behalf of its 198 ranching family members. MCGA manages approximately 504,000 acres of land from the federal government through a grazing agreement, 32,000 acres from the State of North Dakota, and other tracts of lands from the U.S. Army Corps of Engineers and the Bureau of Land Management. MCGA or its members also own, lease, or control a total of about 250,000 acres of private land.

6. I have personally used section line rights-of-way and other public roads in my ranching business to access my pastures. I have also travelled along various other public roads on the National Grasslands to access other pastures and areas of interest. I have travelled on both Spring Creek Road and 106th Avenue, which are in dispute in this current litigation.

7. In about August of 2021, the MCGA received a letter from the Forest Service notifying us that it intended to have an oil and gas company, Marshall and Winston Inc., reclaim a portion of Spring Creek Road, also known as Forest Service Road No. 830, and the road spurring off Spring Creek Road that was identified as Forest Service Road No. 830-2. These roads had been graveled and built up to support the oil and gas development in the area, but were going to be reclaimed back to two-track roads now that oil and gas wells were closed. MCGA objected to the reclamation of the roads due to its members and private landowners still using the road to access grazing pastures and a private ranch.

8. I started to research into the history of Spring Creek Road to see whether it was established as a public road before the United States reacquired the underlying lands in the

1930s. I had immediately found in the McKenzie County Road Book, which documents those historical roads in the County opened by petition and road order, that Spring Creek Road had in fact been opened by petition and County road order in 1917. It was known as County Road #130 when it was first opened, although everyone locally now knows it as Spring Creek Road.

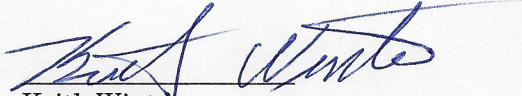
9. I had discussions with the McKenzie County States Attorney and County Commissioners about the Forest Service's planned reclamation of Spring Creek Road and the information I found surrounding this road's establishment as a County Road. I also shared the information with the Forest Service's then acting District Ranger, Lucas Graf, for the Little Missouri National Grassland. However, his response to the information I provided was that because there were deviations from the original location as described in the McKenzie County Road Book and its current location, he did not believe Spring Creek Road was a County Road. In addition, the part of the road they intended to close – Forest Service Road No. 830-2 – is in Section 27 of Township 147 North, Range 104 West, which is not part of the originally opened Spring Creek Road.

10. After I notified the McKenzie County Board of Commissioners and the States Attorney about this response, they decided to formally write to the Forest Service to assert its claim to title to Spring Creek Road and prevent the reclamation of the road back to a two-track road. If this road is allowed to be reclaimed to a two-track road it will become difficult to travel on during the winter months and rainy season due to where water settles along the road.

11. Based on the County's claim to jurisdiction over the road, it is my understanding and from what I have seen on the ground recently is that the Forest Service and Marshall and Winston Inc. have not completed any reclamation work to date on Spring Creek Road or the Forest Service Road No. 830-2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is based upon my personal knowledge and is true and correct.

Executed this 7 day of November 2023,

A handwritten signature in blue ink, appearing to read "Keith Winter", is written over a horizontal line.

Keith Winter
President, McKenzie County Grazing Association